IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.65 OF 2002

IN

SUIT NO.163 OF 2002

Yogesh Vinay Chandra Shah. ....Petitioner/Orig.Plaintiff

vs.

1. Eupharma Laboratories Ltd. & others. ...
Respondents/orig.Defendants.

Ms.N. Mohanthy with Ms.S.T.Shaikh i/b. M/s.S.K.Srivastav & Co., for Plaintiff.

Mr.Sanjay Jain i/b. Lalit Jain, for Respondent nos.1 to 3.

Mr.A.A.Joshi, for Respondent no.14.

Mr.Ashok Singh, for Respondent nos. 5 to 13.

CORAM: D.K.DESHMUKH,J.

DATED: 12th January, 2007.

P.C.:-

1. The original plaintiff in Civil Suit (lodging) no.4564 of 2001 has filed this contempt petition. According to the petitioner, the order

dated 27.12.2001 passed by this Court on a notice of motion taken out by the plaintiff in that Civil suit has been violated by the respondents. The only operative part in the order dated 27.12.2001 reads as under:-

> "In the meantime, it is agreed between the learned Counsel that no major policy decision shall be taken by the Board of Directors and the decisions of the Board shall be implemented only with the permission of the Court."

Perusal of this order shows that the order placed embargo only on the Board of Directors taking major policy decisions and it prevents implementation of any decision taken by the Board of Directors without seeking permission of the Court. According to the petitioner, the petitioner on 10.6.2002 came across a public notice which was signed by the respondent no.5 claiming to be Chairman of the respondent no.1. In that public notice it was informed that the respondent no.1-Company has changed the Registrars and the share transfer agents. In paragraph 12 of the petition, the petitioner states that the decision to change share transfer agent and the Registrar is contrary to the order of the Court dated 27.12.2001. According to the averments in paragraph 12 of the petition it is a major decision and according to the petitioner, the respondent could not have taken that decision and could not have implemented the same. Perusal of the

provisions of the Companies Act shows that a Registered Company has various decision making bodies viz. board of directors, various committees and the general body. There are also office bearers in the company who are empowered to take decisions on behalf of the company. Out of these various bodies, only one body in the company viz. Board of Directors by the order dated 27.12.2001 is prevented from taking major policy decisions and also prevented from implementing its decisions without seeking leave of the Court. The petitioner nowhere in the petition alleges that the decision which is reflected in the public notice is taken by the Board of Directors of the Respondent no.1.

2. A Civil Contempt is a quasi criminal action and therefore, unless and until the petitioner specifically alleges that the decision reflected in the public notice is taken by the Board of Directors, it cannot be said that the decision is contrary or in violation of order dated 27.12.2001. In my opinion, in the absence of specific averments in the petition that the Board of Directors has

taken the decision, which according to the petitioner is violating or is in breach of the order dated 27.12.2001, the respondents cannot be held liable for committing civil contempt of the Court. The petition is therefore, disposed of. The petitioner is directed to pay cost of this petition to the respondents as incurred by the respondents.